



Comptroller General
of the United States

Washington, D.C. 20548

Decision

Matter of: General Regulator

File: B-237047

Date: January 29, 1990

DIGEST

Bid is properly rejected as nonresponsive where bid does not clearly evidence the bidders' intent to provide drawings for approval within the time period specified in the invitation for bids.

DECISION

General Regulator protests the award of a contract to Phillyship for a boiler combustion control system for the S.S. WRIGHT under invitation for bids (IFB) No. DTMA91-89-B-90102, issued by the American Overseas Marine Corporation, a government ship manager for the Maritime Administration (MARAD), Department of Transportation. General Regulator contends that American improperly determined its bid to be nonresponsive.

We deny the protest.

On August 30, 1989, American issued this IFB, which called for a boiler combustion control system and required the contractor to furnish all material and services to install the system on the S.S. WRIGHT. Item 0001 of the IFB, "Combustion Control System Approval," required the contractor to obtain approval of the design of its proposed system from the American Bureau of Shipping (ABS) and the United States Coast Guard (USCG) before removal of the old system and installation of the new system. Item 0001 also provided that no installation can proceed without the approval of the Contracting Officer's Technical Representative (COTR). Items 0002/0003 covered delivery and installation of the system and associated general services.

C-47597/140503

The IFB advised that the government required delivery according to the following schedule:

<u>"CONTRACT LINE ITEM NUMBER</u>	<u>WITHIN DAYS AFTER DATE OF RECEIPT OF A WRITTEN NOTICE TO PROCEED</u>
0001	45 Working Days
0002 thru 0003	45 Working Days"

Although the IFB also provided space for bidders to propose an alternate delivery schedule, it cautioned that alternate delivery schedules which did "not clearly fall within the applicable required delivery period . . . [would] be considered nonresponsive and rejected," and that if the bidder proposed no other delivery schedule the listed required delivery schedule would apply.

On September 15, American received two bids, one from General Regulator at \$187,286 and one from Phillyship at \$192,680. However, American determined that General Regulator's bid was nonresponsive to the delivery requirement under line Items 0002/0003, due to a cover letter that was submitted with the bid. The cover letter stated in the pertinent part:

"Item 0001 General Regulator, per the requirements, will provide drawings for approval within 45 working days from date of receipt of written notification to proceed upon contract award, however, we cannot be held responsible for the applicable regulatory agencies response time for approvals."

"Item 0002
& Item 0003 General Regulator, per the requirements, can deliver equipment within 45 days after all approvals of Item 0001 have been received or upon receipt of written notice to proceed with manufacturing. Installing can commence after delivery of equipment."

American determined that General Regulator's bid was nonresponsive to Items 0002/0003, since the bid only promised delivery of the equipment, but not installation, within 45 working days.

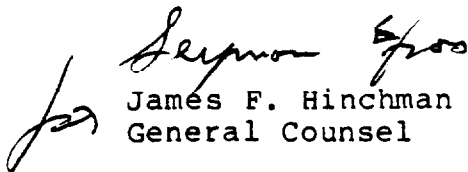
General Regulator argues that the bid should not have been rejected as nonresponsive for this reason because the cover letter indicated that General Regulator would provide delivery of the equipment within 45 calendar days, a shorter delivery period than the required 45 working day completion requirement, which allowed for installation of the equipment within the remainder of the working day period.

We need not, however, resolve the issue as to whether General Regulator is nonresponsive to the Items 0002/0003 delivery schedule, since we find General Regulator did not clearly indicate compliance with the Item 0001 delivery schedule. Although the IFB required the contractor to submit a design and obtain approvals of that design from ABS and USCG within 45 working days from receipt of the notice to proceed, General Regulator's bid could be read as offering to provide the design, but not any approvals, within 45 working days. Indeed, General Regulator's bid specifically disclaims its responsibility for obtaining ABS and USCG approvals within that timeframe. In other words, by this interpretation of its bid, General Regulator has impermissibly reserved to itself the right to take the full 45 working day period before submitting its design, even though the IFB clearly contemplates that this design be submitted to the approving agencies in sufficient time to obtain approval within the 45 working day period. See ASEA Electric, Inc.--Recon., B-218129.2, May 17, 1985, 85-1 CPD ¶ 565 (bidder cannot propose delivery schedule which allows it extended delivery time based on timing of approval of drawings).

An IFB delivery schedule is a material requirement and where the inclusion of a qualification in a bid has the affect of allowing delivery later than required by the IFB, the bid is nonresponsive and must be rejected. Id.; Systron Donner, B-230945, July 5, 1988, 88-2 CPD ¶ 7. Consequently, General Regulator's bid was properly rejected as nonresponsive.

General Regulator also protests MARAD's failure to advise this Office of the agency's decision to proceed in the face of the protest, due to urgent and compelling circumstances. Although this failure did violate the Competition in Contracting Act, 31 U.S.C. § 3553(d)(2)(b) (Supp. V 1987) and Federal Acquisition Regulation § 33.104(c)(3) (FAC 84-40), this failure did not prejudice General Regulator since an appropriate determination to proceed with performance was actually made and General Regulator's bid was properly determined to be nonresponsive. See Free State Reporting, Inc.; Neal R. Gross and Co., Inc., B-225531 et al., Jan. 13, 1987, 87-1 CPD ¶ 54.

The protest is denied.


James F. Hinchman
General Counsel